

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

JOHN VIDUREK; KIMBERELY VIDUREK,

Plaintiff,

-against-

IRS, ET AL.,

Defendants.

17-CV-7971 (CM)

ORDER OF DISMISSAL

COLLEEN McMAHON, Chief United States District Judge:

By order dated October 18, 2017, the Court directed Plaintiff John Vidurek<sup>1</sup> to either submit a completed *in forma pauperis* application detailing his income or pay the \$400.000 in filing fees. On November 8, 2017, Plaintiff paid the \$400.00 in fees. By letter dated November 16, 2017, Plaintiff asked the Court to reassign the action to a district judge in White Plains. On November 20, 2017, Plaintiff filed a new action asserting the same claims against the same parties that he had named in this complaint, and the action was assigned to a district judge in White Plains. *See Vidurek v. Koskinen*, No. 17-CV-9064 (VB) (S.D.N.Y.).

By letter to the Court dated November 17, 2017, but entered on the docket on November 30, 2017, Plaintiff stated that he was “withdrawing case #1:17-cv07971-CM and request[s] that it be removed from the docket and monies returned.” (ECF Nos. 5-6.) The Court lacks authority to refund the fees for commencing this action. *See, e.g., Goins v. DeCaro*, 241 F.3d 260, 261 (2d Cir. 2001) (“[A] refund claim . . . encounters the barrier of sovereign immunity, since the debited funds have become the property of the United States. *See* 28 U.S.C. §§ 711(c), 751(e) (requiring

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<sup>1</sup> Although Kimberly Vidurek is listed as a Plaintiff in the caption of the complaint, she did not sign the complaint, and the Court therefore deems John Vidurek the sole Plaintiff in this action.

clerks of courts of appeals and district courts to pay all fees ‘into the Treasury’).”).) Moreover, even if Plaintiff had not asked to withdraw this action, no useful purpose would be served by the litigation of this duplicate lawsuit.<sup>2</sup> The Court therefore dismisses this action without prejudice to Plaintiff’s pending action under docket number 17-CV-9064 (VB).

The Clerk of Court is directed to assign this matter to my docket, to mail a copy of this order to Plaintiff, and to note service on the docket. Plaintiff’s complaint is dismissed as duplicative, without prejudice to the action under docket number 17-CV-9064 (VB).

The Court certifies under 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith, and therefore *in forma pauperis* status is denied for the purpose of an appeal. *See Coppedge v. United States*, 369 U.S. 438, 444-45 (1962).

SO ORDERED.

Dated: November 30, 2017  
New York, New York

A handwritten signature in black ink, appearing to read 'Colleen McMahon', is written over a horizontal line.

COLLEEN McMAHON  
Chief United States District Judge

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<sup>2</sup> Plaintiff can seek leave to raise any matter raised in this complaint that was not raised in *Vidurek v. Koskinen*, No. 17-CV-9064 (VB) (S.D.N.Y.).